IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 24693 of 2007(M)

AGAINST THE ORDER IN EP 28/2007 IN OS 16/02. IN OS.323/2006 of MUNSIF COURT, KANJIRAPPALLY
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PETITIONER:

ANTONY, AGED 57, S/O. MANI, KAIPPANANIKKAL, MADUKKAKUNNU BHAGOM, ELIKULAM KARA, ELIKULAM VILLAGE, REP. BY NEXT FRIEND MARY, AGED 54, W/O. ANTONY, KAIPPANANIKKAL HOUSE, MADUKKAKUNNU BHAGOM, ELIKULAM KARA, ELIKULAM VILLAGE.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU
SMT.C.S.RAJANI

RESPONDENTS:
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1. **MARIAM, AGED ABOUT 73, D/O. MANI, VECHOOR HOUSE, ELIKULAM KARA, ELIKULAM VILLAGE FROM KAIPPANANIKKALAYA PUTHENPARAMBIL, ELIKULAM KARA, ELIKULAM VILLAGE.**

2. **ALEY, AGED 71, D/O. MANI, MOOZHIKUZHIYIL, MOONNILAVU KARA, MOONILAVU VILLAGE FROM KAIPPANANIKKALAYA PUTHENPARAMBIL.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

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W.P.(C).24693 of 2007

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Dated this the 14th day of August, 2007

JUDGMENT

This writ petition is filed to direct the Munsiff Court, Kanjirappally, to conduct a proper enquiry in respect of the mental soundness of the plaintiff in Ext.P1 proceedings in the presence of a Psychiatrist. A suit is filed by the wife as the guardian under Order 32 of the Civil Procedure Code. The averments is to the effect that the original plaintiff is not capable of prosecuting the case for himself, and therefore, a guardian has to be appointed. Order 32 Rule 15 envisages a formal enquiry by the Judicial Officer regarding the correctness of the same. It is seen that the learned Munsiff has recorded an enquiry which is seen as Ext.P4 before this Court. The writ petitioner has also produced Ext.P5 issued by a consultant psychiatrist of Sree Sudheendra Medical Mission which shows that there is mental subnormality / mental retardation to Sri. Antony Mani since birth and he needs guidance and support for self-care major decision making.

I had perused the enquiry conducted by the learned Munsiff. When conducting an enquiry under Order 32 Rule 15 it is necessary that the court must put questions and record the answers given by the person, and in doing so, the court can take note of the time consumed, the demenour and the general characteristics. It is also a settled proposition that the court is not expected to put questions with respect to the subject matter of the suit. The enquiry should be in a direction to find out whether the person is able to understand matters and also able to envisage the consequences of his action. Then on such enquiry if the court finds it is so, then the court may record the same in the form of an order. But in the present enquiry the question and answers will not make the Appellate Court or Revisional Court understand what is the impact of such question. Therefore, I feel interest of justice requires a further examination of the person by putting definite questions and recording the answers and put some questions which are capable of eliciting the normal intelligence of the person. Such questions are necessary in this case for the reason that the medical certificate shows mental retardation by birth. If the

proposed guardian wants to adduce medical evidence by examining a doctor that also may be permitted and the court can take the decision thereafter on the basis of the materials available. I am informed by the learned counsel for the writ petitioner that the enquiry is not completed and order is not pronounced. Therefore, I direct the learned Munsiff to proceed in terms of the observations made by me in the previous paragraphs of the order and dispose of the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N.KRISHNAN,JUDGE

dvs